



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH, DEVELOPMENT AND ACQUISITION  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

JUL 27 2005

DAR Tracking Number:  
2005-00004

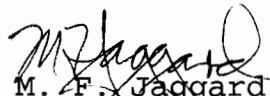
MEMORANDUM FOR DISTRIBUTION

Subj: CLASS DEVIATION-EXEMPTION FROM LIMITATIONS ON PROCUREMENT  
OF FOREIGN INFORMATION TECHNOLOGY THAT IS A COMMERCIAL  
ITEM, FY 2005

Encl: (1) OUSD DPAP(DAR) memo dtd July 6, 2005

Enclosure (1) is forwarded for your information and immediate implementation, as appropriate. The Director of Defense Procurement has advised that when using fiscal year 2005 funds, the Buy American Act restrictions do not apply to the acquisition of foreign information technology that is a commercial item. Accordingly, do not use the associated DFARS or FAR provisions and clauses. The subject class deviation is limited to the use of FY2005 funds.

This class deviation is effective July 6, 2005, and remains in effect until incorporated in the DFARS or until otherwise rescinded.

  
M. F. Jaggard  
Chief of Staff/Policy  
for DASN (ACQ)

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ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

DPAP(DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUL 06 2005

In reply refer to  
DAR Tracking Number: 2005-O0004

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES

DEPUTY ASSISTANT SECRETARY OF THE ARMY,  
(POLICY AND PROCUREMENT), ASA(ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION MANAGEMENT), ASN(RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY  
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY AND  
SUPPLY DIRECTORATE (DLA)

SUBJECT: Class Deviation-Exemption from Limitations on Procurement of Foreign  
Information Technology that is a Commercial Item, FY 2005

When using fiscal year 2005 funds to acquire information technology that is a commercial item, do not use any of the following Defense Federal Acquisition Regulation Supplement (DFARS) provisions and clauses as prescribed at DFARS 225.1101(1), (2), (9), and (10) or the associated FAR clauses which they otherwise replace:

- 252.225-7000, Buy American Act—Balance of Payments Program Certificate.
- 252.225-7001, Buy American Act and Balance of Payments Program.
- 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.
- 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

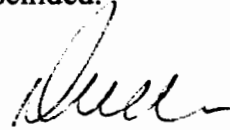
The Buy American Act does not apply to these acquisitions of foreign information technology because Section 517 of Division H Title II of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447) provides exemption (Atch 1).



ENCLOSURE(1)

When applicable, continue to use the Trade Agreements provision and clause at 252.225-7020 and 252.225-7021, as prescribed at 225.1101(5) and (6).

This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or until otherwise rescinded.

A handwritten signature in black ink, appearing to read 'Deidre A. Lee', with a stylized flourish at the end.

Deidre A. Lee  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

cc:  
DSMC, Ft. Belvoir

**Pub. L. 108-447**  
Enacted 12/8/2004

H.R.4818

*One Hundred Eighth Congress  
of the  
United States of America  
AT THE SECOND SESSION*

Begun and held at the City of Washington on Tuesday,  
the twentieth day of January, two thousand and four

An Act

Making appropriations for foreign operations, export financing, and related programs for  
the fiscal year ending September 30, 2005, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of  
America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Consolidated Appropriations Act, 2005'.

\* \* \* \* \*

**DIVISION H--TRANSPORTATION, TREASURY, INDEPENDENT  
AGENCIES, AND GENERAL GOVERNMENT APPROPRIATIONS  
ACT, 2005**

\* \* \* \* \*

**TITLE II**

**DEPARTMENT OF THE TREASURY**

\* \* \* \* \*

SEC. 517. In order to promote Government access to commercial information  
technology, the restriction on purchasing nondomestic articles, materials, and  
supplies set forth in the Buy American Act (41 U.S.C. 10a et seq.), shall not apply  
to the acquisition by the Federal Government of information technology (as  
defined in section 11101 of title 40, United States Code, that is a commercial item  
(as defined in section 4(12) of the Office of Federal Procurement Policy Act (41  
U.S.C. 403(12))).

TAB A Atch 1